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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/534,893	03/24/2000	Joel Lazewatsky	DM6993	2336

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EXAMINER

JONES, DAMERON

ART UNIT PAPER NUMBER

1616

DATE MAILED: 04/11/2003

20

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N .

09/534,893

Applicant(s)

LAZEWATSKY, JOEL

Examiner

D. L. Jones

Art Unit

1616

-- The MAILING DATE of this c mmunication appears on the c ver sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 January 2003 and 27 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) 1-16, 18, 19, 25 and 33-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17, 20-24, 26-32, and 55-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **ACKNOWLEDGMENTS**

1. The Examiner acknowledges receipt of Paper No. 19, filed 1/27/03, wherein Figure 1 was submitted. In addition, Paper No. 18, filed 1/2/03, is acknowledged wherein Applicant requested reconsideration of the office action mailed 9/27/02, Paper No. 16.

**Note:** Claims 1-58 are pending.

## **RESPONSE TO APPLICANT'S ARGUMENTS**

2. The Applicant's arguments filed 1/2/03 (Paper No. 18) to the rejection of claims 17, 20-24, 26-32, and 55-58 made by the Examiner under 35 USC 102, 103, and/or 112 have been fully considered and deemed persuasive-in-part for the reasons set forth below.

### **112 Rejections**

The rejection of claims 17, 20-24, 26-32, and 55-58 as being rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is MAINTAINED for reasons of record in the office action mailed 9/27/02, and set forth below.

Applicant asserts that one of ordinary skill in the art would have no difficulty determining the intended meaning and scope of 'physical property' as set forth in the

claims. For support, Applicant points to page 26, lines 3-8, which disclose that the image slices reflect the concentration of radioactivity within the thrombus.

The Examiner's position is as follows. It is unclear what physical property, not the definition of a physical property, which is being claimed. If the physical property set forth in the claims is the 'concentration' then Applicant is respectfully requested to incorporate that into the claims. Likewise, if the physical property is a group of characteristics that Applicant uses that represent Applicant's acquired image slices, then the Markush terminology (e.g., wherein the physical property of the radiolabeled pulmonary embolus is selected from the group consisting of...) would be acceptable. However, the claims as written just claim that image slices are acquired which represent a physical property of the radiolabeled pulmonary embolus. A review of the specification does not disclose a listing of possible properties of interest in acquiring the image slices. Thus, one cannot readily ascertain what physical property or properties are encompassed in the claims. The number of physical characteristics associated with any object/substance may cover a wide spectrum of qualities. Thus, is Applicant intending that you select any possible property associated with the substance and generate an image? Applicant is once again respectfully requested to clarify the record in order that one may readily ascertain what is being claimed.

If Applicant's position is that the specification discloses various physical properties used to represent the image slice, then Applicant is respectfully requested to point to various pages and lines in the specification wherein the various physical properties representing the acquired image slices are disclosed.

**102/103 Rejections**

The 102/103 rejections are WITHDRAWN for reasons of record in Applicant's response.

**WITHDRAWN CLAIMS**

3. Claims 1-16, 18, 19, 25, and 33-54 are withdrawn from further consideration, for reasons of record in the office action mailed 9/27/02, by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

**COMMENTS/NOTES**

4. The claims are distinguished over the prior art of record for reasons of record in Applicant's response filed 1/2/03, Paper No. 18. Specifically, the prior art neither anticipates nor renders obvious each and every step for performing the methods as set forth in the instant invention.

5. Applicant is once again reminded that the search has not been extended beyond Group IV.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within


Art Unit: 1616

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to D. L. Jones whose telephone number is (703) 308-4640. The examiner can normally be reached on Mon.-Fri. (alternate Mon.), 6:45 a.m. - 4:15 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose' Dees can be reached on (703) 308- 4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

  
D. L. Jones  
Primary Examiner  
Art Unit 1616

April 9, 2003